

**REMARKS***Status*

Claims 18-27 are currently amended so as to recite the ingredients of Formulas 7-10. No new matter has been introduced by these amendments. No claim is newly canceled. Claims 1-16 and 18-36 are currently pending.

*Claim Rejection Under 35 U.S.C. § 112, Second Paragraph*

Claims 18-27 stand rejected under 35 U.S.C. § 112, second paragraph, as purportedly being indefinite for failing to list the ingredients of Formulas 7-10 as provided in Table IX of the specification at page 29. Applicant has hereby amended claims 18-27 so that they list the ingredients of Formulas 7-10 as provided in Table IX. The Examiner is respectfully requested to withdraw this rejection in view of these amendments to the claims.

*Claim Rejections Under 35 U.S.C. §§ 102 and 103*

Claims 1-7 and 36 stand rejected under 35 U.S.C. § 102 as purportedly being anticipated by Romaine *et al.* (U.S. Patent No. 4,803,800; hereinafter referred to as “the ‘800 patent”); and claims 8-16 and 18-35 under 35 U.S.C. § 103 as purportedly being unpatentable over the same reference.

While Applicant strongly believes that the present invention is not anticipated by or rendered obvious in view of the ‘800 patent for the reasons of record, Applicant hereby provides a Declaration Under 37 C.F.R. § 1.132 by Dr. C. Peter Romaine (“the Romaine Declaration”). Dr. Romaine is the principal inventor of the invention disclosed and claimed in the ‘800 patent cited by the Examiner. As set forth in the Romaine Declaration and his accompanying 43 page Curriculum Vitae (Exhibit A to the Declaration), Dr. Romaine is a recognized expert in the field of mushroom genetics and mushroom cultivation. The Romaine Declaration provides clear and convincing arguments as to the reasons why the ‘800 patent completely fails to render the presently-claimed invention unpatentable.

The Romaine Declaration explains in great detail why one skilled in the art readily appreciates that “the synthetic mushroom spawn or CACing materials” taught in the ‘800 patent are “distinctly different material” than the “mushroom supplement” claimed in the present

application. See, the Romaine Declaration at paragraphs 6-10. The Romaine Declaration also clearly establishes that the results achieved by using the mushroom supplements of the present invention were clearly unexpected by those of ordinary skill in the art. See, for example, paragraph 11 of the Romaine Declaration. Furthermore, the Romaine Declaration establishes that one skilled in the art readily appreciates that the Office Action “contains several errors and erroneous assumptions” that severely undermine the Examiner’s position about the teachings of the ‘800 patent relative to the presently claimed invention. See paragraph 12A-H of the Romaine Declaration.

For all of the reasons made of record by the Applicant and in view of the Romaine Declaration, the Examiner is respectfully requested to withdraw the prior art rejections and allow the claims to issue.

*Conclusion*

The amendments made herein are fully supported by the as-filed specification, and as such, no new matter has been added by way of the present amendment. Therefore, Applicants respectfully submit that the instant application is in full condition for allowance. Favorable examination of the claims on the merits is respectfully requested.

The Examiner is invited to contact the undersigned if any issues remain outstanding after consideration of this Amendment and Response.

Respectfully submitted,

**MORGAN, LEWIS & BOCKIUS LLP**



Erich E. Veitenheimer

Reg. No. 40,420

Dated: April 29, 2005

Customer No. 009629

**MORGAN, LEWIS & BOCKIUS LLP**

1111 Pennsylvania Avenue, NW

Washington, D.C. 20004

(202) 739-3000